

HIGH COURT OF UTTARANCHAL AT NAINITAL

**Criminal Appeal No. 858 of 2001
(Old No. 2734/1987)**

1. Pratap Singh Kuwar
2. Gopal Singh Appellants

Versus

State1 Respondent

Sri Sudhir Singh i/b Sri P.M.N. Singh learned counsel for the appellants
Sri Amit Bhatt learned A.G.A.

Hon'ble J.C.S.Rawat, J.

This is a criminal appeal against the judgment and order dated 28.8.1987 passed by Sri Mohan Singh, the then Sessions Judge, Almora in Criminal Misc. Case No.3/1987, by which the learned Sessions Judge has directed the appellants, who were the sureties of accused-Johar Singh, to deposit the amount of Rs.1,000/- within one week and it was further directed that in default the proceedings shall be taken against them.

2. The brief facts of the case are that appellants-Gopal Singh and Pratap Singh stood sureties for the accused-Johar Singh in S.T. No.33/1987. The case was fixed for hearing on 27.4.1987 and the personal attendance of the accused-Johar Singh was exempted. Thereafter, the case was listed on 18.5.1987 and an application was moved for exemption of personal attendance of the accused on the ground of illness. Then, a reference was made to the Chief Medical Officer (CMO) to give the report as to whether the accused was in a fit condition to attend the court. The CMO vide letter dated 23.5.1987 intimated that although the accused was earlier admitted and referred to Balrampur

Hospital, Lucknow but he was fit to attend the court. The accused remain absent and did not appear before the court concerned inspite of several directions. Thereafter, on 4.8.1987 accused-Johar Singh moved an application to recall the non-bailable warrant issued against him and filed the discharge certificate dated 23.7.1987.

3. The sureties in reply to the notice had submitted that the accused-Johar could not appear before the court due to illness on the date fixed. Perusal of the record reveals that the accused-Johar moved an application on 27.4.1987 for seeking exemption from personal attendance and the same was allowed by the learned Sessions Judge. Thereafter the case was fixed on 18.5.1987 and on that day an application was also moved by the accused on the ground of illness and he also furnished the medical certificate. The said medical certificate was referred to the C.M.O., Balrampur Hospital, Lucknow for verification. The C.M.O. intimated that the accused was admitted in the hospital and on the date fixed he was in a fit condition to attend the court. The verification was not sought from the higher authorities of the doctor who issued the medical certificate. Thereafter, the accused did not appear on 14.7.1987 and he was discharged from the hospital on 23.7.1987. Thus, the accused was ill and he could not appear before the court. Perusal of the record reveals that the accused as a matter of fact had not misused his bail. The accused surrendered before the court on 14.8.1987 and it is clear that the accused did not deliberately fail to attend the court. Thus, the cause shown by the sureties is sufficient.

4. Keeping in view of the totality and circumstances of the case, I am of the view that the appeal is liable to be allowed.

5. Therefore, the appeal is allowed and the order dated 28.8.1987 passed by the Sessions Judge, Almora is set aside.

(J.C.S. Rawat, J.)

Dated 20.9.2004

Rawat